

Social Security Administration

§ 405.360

(4) The evidentiary and legal basis upon which your disability claim can be approved, and

(5) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

§ 405.340 Deciding a claim without a hearing before an administrative law judge.

(a) *Decision fully favorable.* If the evidence in the record supports a decision fully in your favor, the administrative law judge may issue a decision without holding a hearing. However, the notice of the decision will inform you that you have the right to a hearing and that you have a right to examine the evidence on which the decision is based.

(b) *You do not wish to appear.* The administrative law judge may decide a claim on the record and not conduct a hearing if—

(1) You state in writing that you do not wish to appear at a hearing, or

(2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the evidence, which, except for the transcript of the hearing, will contain the material described in § 405.360. The decision of the administrative law judge must be based on this record.

[71 FR 16446, Mar. 31, 2006, as amended at 75 FR 33168, June 11, 2010]

§ 405.342 Prehearing proceedings and decisions by attorney advisors.

After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in § 404.942(c) or § 416.1442(c) of this chapter. If, after the completion of these proceedings, we can make a decision that is fully favorable to you and all other parties based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue the decision. We use the procedures § 404.942 or § 416.1442 of this chapter when we conduct prehearing proceedings or issue decisions under this section.

[76 FR 24809, May 3, 2011]

§ 405.350 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the administrative law judge determines that the conditions in § 405.315(c) exist, by video teleconferencing, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* The administrative law judge may receive any evidence at the hearing that he or she believes relates to your claim.

(c) *Witnesses at a hearing.* Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask the witnesses any questions relating to your claim.

§ 405.351 Closing statements.

You or your representative may present a closing statement to the administrative law judge—

(a) Orally at the end of the hearing,

(b) In writing after the hearing and within a reasonable time period set by the administrative law judge, or

(c) By using both methods under paragraphs (a) and (b).

§ 405.360 Official record.

All hearings will be recorded. All evidence upon which the administrative law judge relies for the decision must be contained in the record, either directly or by appropriate reference. The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were used in making the decision under review and any additional evidence or written statements that the administrative law judge admits into the record under §§ 405.320(a) and 405.331. All exhibits introduced as evidence must be marked for identification and incorporated into the record. The official record of your claim will contain all of the marked exhibits and a verbatim recording of all